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April 14, 1976

76-121

Honorable Ed C. Sawyer
Chairman, Appropriations Committee
Arizona State Senate
Senate Wing, State Capitol
Phoenix, Arizona 85007

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Dear Senator Sawyer:

This is in response to your letter of February 20, 1976, wherein you asked the following two questions:

1. Can money in the permanent uninsured loss coverage revolving fund, A.R.S. § 41-622.A, be used to reimburse uninsured property losses suffered by various state agencies, in view of the provisions of A.R.S. § 41-621.B?
2. If so, can the money from the fund be paid to the department that suffered the uninsured loss or must it be paid directly to the contractor who rebuilds the state property or the person who supplies the goods or services in replacing the loss?

A.R.S. §§ 41-621 and 41-622 were amended by Laws 1975, Ch. 12, § 2, effective April 24, 1975. A.R.S. § 41-621 provides the obtaining of insurance by the Department of Administration for two groups of insurance: mandatory insurance and discretionary self-insurance. Subsection A mandates that the Department of Administration shall obtain insurance against loss on those items specifically enumerated in subsections 1-6. Subsection B provides the Department of Administration with discretion, in that it may provide state self-insurance for damages for ". . . injury, sickness, disease or death against a state owned medical facility or a physician or surgeon employed by the state and who is authorized to act in such capacity. . . ." Subsection B further provides that, in the event the Department of Administration determines the necessity or desirability of state self-insurance for such aforementioned damages,



such insurance coverage shall be secondary coverage for any loss which is covered by an insurance agreement required by subsection A of A.R.S. § 41-621.

A.R.S. § 41-622.A establishes a permanent uninsured loss coverage revolving fund for the payment of: (1) uninsured losses pursuant to A.R.S. § 41-621.A and (2) self-insurance programs pursuant to A.R.S. § 41-621.B. Prior to its amendment by Laws 1975, Ch. 12, A.R.S. § 41-622.A provided:

* * *

- A. There is established a permanent uninsured loss coverage revolving fund in the department of administration for the payment of uninsured losses.

The amendment thereto deleted the period at the end of the sentence and continued:

and all claims, defense costs and other expenses included within state self-insurance programs as determined by the department pursuant to § 41-621, subsection B.

The Court in Territory v. Ruval, 9 Ariz. 415, 84 P. 1096 (1906), held that where a statute is amended by an act providing that the original statute "shall be amended so as to read as follows", repeating the original and adding to it new provisions not in conflict with the original provisions, the repeated provisions are not a new enactment, but remain in force from the time of their original enactment. See also State v. Vineyard, 96 Ariz. 76, 392 P.2d 30 (1964).

A.R.S. § 41-622.A further provides in part:

Departments, agencies, boards or commissions of the state may apply for monies therefrom to reimburse any uninsured property losses suffered by such departments, agencies, boards or commissions which are deemed proper by the director of the department of administration as claims for payment from the revolving fund.
(Emphasis added.)

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Furthermore, A.R.S. § 41-622.C provides that all monies in the permanent uninsured loss coverage revolving fund are available for use as provided in that section without limitation to A.R.S. § 41-621.B.

It is our conclusion that the Legislature intended to use the already established "permanent uninsured loss coverage revolving fund" as the vehicle to provide funds for state self-insurance for damages as enumerated under A.R.S. § 41-621.B without diminishing or disturbing the procedures used to pay uninsured losses as enumerated under A.R.S. § 41-621.A, subsections 1 through 6.

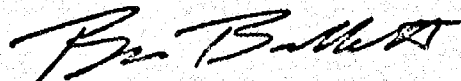
In response to your second question, A.R.S. § 41-622.A provides in part:

The director of the department of administration, subject to the provisions of § 41-730, is authorized to disburse monies to contractors who rebuild state property as a result of uninsured losses or to persons who supply goods or services in replacing uninsured losses. (Emphasis added.)

It is obviously very clear from the wording of the statute that the money from the permanent uninsured loss coverage revolving fund can only be paid to the contractor who rebuilds the state property or to the person who supplies the goods or services in replacing uninsured losses, and not to the department that suffered the uninsured loss. The Court held in Southern Pac. Co. v. Maricopa County, 56 Ariz. 247, 107 P.2d 212 (1940), that, generally, language in a statute is to be given the meaning in which it would be understood by the ordinarily intelligent man, unless it is clearly used in a technical sense.

If I can be of further assistance to you please feel free to contact me.

Sincerely,



BRUCE E. BABBITT
Attorney General

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